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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 97-013

AN ORDER to . . . , relating to inmate conduct, inmate discipline and procedures for the imposition of discipline.

Submitted by **DEPARTMENT OF CORRECTIONS**

02-03-97 RECEIVED BY LEGISLATIVE COUNCIL.

03-03-97 REPORT SENT TO AGENCY.

RS:RJC;jt;kjf

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES ☒

NO ☐

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES ☒

NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES ☐

NO ☒

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached

YES ☒

NO ☐

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES ☒

NO ☐

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES ☐

NO ☒

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES ☐

NO ☒

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CLEARINGHOUSE RULE 97-013

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

What specific statutory authority exists for agency imposition of civil forfeitures on inmates?

2. Form, Style and Placement in Administrative Code

a. When two or more subsections, paragraphs, subdivisions or subparagraphs of the same rule sections are affected by the same treatment, they may be included in the same SECTION of the rule and the rule section number need not be repeated for each subunit of the section. [See s. 1.04 (2), Manual.] For example, in SECTION 1 of the rule, s. DOC 303.01 need not be repeated each time before the amendments made in subs. (2) and (3). [See also, e.g., SECTIONS 32, 41, 43, 57, 65, 67, 74 to 78, 93, 94, 95, 105, 106, 125 to 128, 138, 144, 146, 147, 151, 152, 168, 169, 179 and 180.] In addition, SECTIONS 25, 26, 27 and 28 of the rule could be combined because subsections of the same rule section are amended. [See also, e.g., SECTIONS 35 to 38, 39 and 40, 52 to 55, 69 to 72, 89 to 92, 99 to 102, 109 to 119, 122 to 123, 128 to 136, 139 to 143, 148 to 150, 155 to 158, 163 to 166, 174, 175, 177 and 178.]

b. Generally, if a rule provision containing a title is amended, the title is shown even if it is not amended [s. 1.05 (3) (d), Manual]. For example, the various subsections of s. DOC 303.05, which are amended by the rule, all contain titles in the current rule, yet no titles are shown in the amendments to those subsections. They should be.

c. In s. DOC 303.01 (1), the phrase "has the authority to" should be replaced by the word "may"; the word "provision" should be replaced by the word "subsection" or "section"; and the word "discipline" should be replaced by the word "disciplined."

d. In the treatment clause of SECTION 41, "(3)" need not be repeated after its first occurrence.

e. SECTION 43 of the rule, as well as other parts of the rule, uses the term "TLU." Since the term appears to be used throughout ch. DOC 303, it should be defined in the definition portion of the rule. In addition, although SECTION 43 of the rule purports to amend, among other things, s. DOC 303.11 (2), it appears that it really amends s. DOC 303.11 (3). The rule should be reviewed to ensure that its intent is correctly reflected.

f. Because SECTION 46 of the rule rennumbers s. DOC 303.12 as sub. (1), "(1)" need not be underscored.

g. The rule provisions contained in SECTIONS 69 to 72 of the rule all contain an "Exception." These exceptions should be redrafted so that the exception is grammatically and conceptually complete. For example, the exception in s. DOC 303.26 (3) could be rewritten as follows: "This subsection does not apply to hobby items"

h. The underscoring in s. DOC 303.271 (2) should be solid.

i. The treatment clause of SECTION 82 of the rule could be simplified as follows: "DOC 303.42 (1) (intro.) and (1) (a) to (d) are amended to read:".

j. The treatment clause of SECTION 84 should refer to s. DOC 303.46 (1).

k. The treatment clause of SECTION 85 should refer to s. DOC 303.47 (2) (a) to (d), since sub. (2) (intro.) is not amended. In addition, the word "is" should be deleted.

l. There are two SECTIONS numbered "95" and no SECTION 96.

m. In s. DOC 303.64 (3) (intro.) and (a), the phrases beginning with "See" should be reworded "as provided under . . ." and included in the sentences immediately preceding them.

n. No amendments are shown in s. DOC 303.67 (4) (a) and (b).

o. There are two SECTIONS numbered "128" and no SECTION 129.

p. In s. DOC 303.68 (1) (a), the notation "\$6-\$10" should be replaced by the notation "\$6 to \$10." The entire rule should be reviewed for this problem.

q. No part of the title in s. DOC 303.71 (5) should be underscored [s. 1.05 (3) (c), Manual]. This comment also applies to s. DOC 303.72 (8).

r. In s. DOC 303.76 (6), par. (e) is not structurally consistent with the remaining paragraphs.

s. The last sentence of s. DOC 303.81 (5) would be more appropriately placed in a note to the rule.

t. In SECTION 169 of the rule, there is no need to amend s. DOC 303.83 (1) (intro.), because sub. (1) does not contain an (intro.). It appears that s. DOC 303.83 (intro.) and (1) to (10) are amended. The SECTION should be modified accordingly.

u. The use of titles should be consistent in any unit of a rule. The rule creates a title for s. DOC 303.84 (1) (L) when none of the other paragraphs in that subsection have titles. The title should be deleted. If, on the other hand, the title as shown is not intended as a title, it should not be underscored.

v. SECTION 178 of the rule purports to amend s. DOC 303.84 (2) (e). However, no amendment is apparent. This SECTION should be reviewed.

w. In s. DOC 303.86 (2) (b) 1. and 2., the examples should be placed in a note to the rule. See, for example, s. DOC 303.86 (1) (b).

x. In the first sentence of s. DOC 303.86 (4), "If" should be replaced by "If" and "If" should be deleted.

y. In the amendment to the Note to s. DOC 303.13, the heading "Note: DOC 303.13" should be on a line separate from the amendment to the Note to s. DOC 303.12.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. DOC 303.02 (10), what is an "unsanctioned group"? If there is a formal sanctioning process for prison groups in the Administrative Code or the statutes, an appropriate cross-reference should be provided.

b. Section DOC 303.02 (11) refers to a "prison defined under intensive sanctions." Where is this definition? An appropriate cross-reference to a related statute or rule should be provided.

c. Based upon changes made in the rule, the reference to s. DOC 303.02 (17) in s. DOC 303.15 (1) (b) should be changed to a reference to s. DOC 303.02 (20).

d. SECTIONS 58 and 61 of the rule make reference to s. DOC 309.22. However, it does not appear that this section presently exists. Is that section created by another rule currently in the rules promulgation process? The reference to this nonexistent section should be explained or corrected.

e. The reference to "the rules" in s. DOC 303.48 (4) should contain a cross-reference to better identify which rules are referred to. In addition, the word "subsection" should be inserted after the word "This" in the second sentence.

f. In s. DOC 303.67 (4) (b), the notation "s." should be "ss.", as it is in the current rule.

g. The cross-reference in s. DOC 303.69 (8), relating to mechanical restraints, appears to be incorrect. The correct cross-reference appears to be s. DOC 303.09 (1).

h. Section DOC 303.73 (5) relates to sending mail according to departmental rules. The rule should provide an appropriate cross-reference to the departmental rules relating to sending mail. [See also s. DOC 303.69 (12) (b) and (c).]

i. In s. DOC 303.84 (1) (L), a reference to the schedule of forfeitures should be inserted after the phrase "only the \$1-5.00 amount" in the second sentence.

j. Section DOC 303.84 (2) (g) refers to an "administrative rule." This reference should be made more specific, such as "in this chapter" or "in ss. DOC ____ and ____."

k. In the amendment to the Note to s. DOC 303.70, the STEP program is referred to. What is this program and is there an appropriate cross-reference that can be provided? If so, the rule should be amended accordingly.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. DOC 303.01 (1), it is not clear what is meant by "another jurisdiction."

b. It is not clear from s. DOC 303.02 (17) what the last phrase of that subsection means. The relevance of what it means to be "an activity" should be clarified in the rule through the use of a note or the use of an appropriate cross-reference to an offense requiring that possession be an "activity." In addition, for purposes of clarity, it would be helpful to replace "or" with "or," end the sentence after "control" and begin a second sentence with the phrase "Possession is considered"

c. The phrase "the warden's" should be inserted between the words "or" and "designee" in s. DOC 303.02 (23).

d. The two dashes after the word "condition" in s. DOC 303.02 (24) (c) should be changed to a comma.

e. In s. DOC 303.05 (1), the phrase "alleged to have been violated under this chapter," or a substantially similar phrase should be added after the word "sections" in order to better identify the sections being referred to.

f. In s. DOC 303.06 (1) (intro.), the word "all" should be deleted. In addition, par. (a) should be clarified to better identify when the rule violation would have occurred. For example, the "something" that was intended would have been a rule violation if actually committed by the inmate. Finally, in par. (b), the phrase "at that time" should be replaced by the phrase "when the acts occurred."

g. In s. DOC 303.07 (1) (c), what does "this" refer to? The assistance or the offense? The rule should be clarified.

h. In s. DOC 303.10 (1) (a), the phrase "for example" should be replaced by the word "including."

i. In s. DOC 303.10 (3) (d), what is the distinction between the "owner" of property and the "true owner" of property? The distinction should be clarified. If there is no distinction, the rule should use consistent terminology.

j. Section DOC 303.11 (6) refers to "corrections industries." Chapter DOC 313, however, refers to "Prison Industries." Are these the same? If so, it would seem appropriate to use the term "prison industries" in ch. DOC 303, as well.

k. Can it be properly inferred from s. DOC 303.12 (2) that throwing some form of identified substance that is not spit, body fluid or waste, is not a separate offense?

l. The phrase "even while clothed" in s. DOC 303.15 (1) (f) should be replaced by the phrase "whether clothed or unclothed."

m. In s. DOC 303.20 (2) (d) the phrase "for example, to" should be replaced by "including."

n. It is not clear why, in light of the definition of "possession" contained in s. DOC 303.02 (17) and the plain language of s. DOC 303.20 (3), the second sentence of s. DOC 303.20 (3) is necessary. If it is necessary, it should be clarified to provide that the possession being referred to is possession of gang literature, creed, symbols or symbolisms. Also, what is meant by the phrase "may be viewed as"? Is hair sculpturing an "unsanctioned group activity" or is such a decision left up to the institution staff on a case-by-case basis? The rule should be clarified.

o. In s. DOC 303.21 (1), the word "forbidden" should be replaced by the word "prohibited."

p. The phrase "some conduct" in s. DOC 303.25 is vague. Who decides which conduct within treatment groups constitutes disrespect? The rule should be clarified.

q. In light of the definition of "public" provided in s. DOC 303.02 (18), the phrase "sale to the public" in s. DOC 303.26 (3), does not make much sense. Perhaps it would be possible to provide a more narrow definition of "public" which would only apply in certain situations. For example, the phrase "public expressions" could be defined for purposes of s. DOC 303.25 to be expressions made outside of the formal complaint process.

r. In s. DOC 303.271 (3), the addition of the word "the" in the second sentence does not add clarity to the rule. Which supervisor is to be contacted? The rule should identify which supervisor should be contacted. If the staff member is to contact his or her supervisor, the phrase "his or her" could be retained or the phrase "the staff member's" could be used.

s. It appears that s. DOC 303.41 is incomplete. Is an inmate who does any of the acts described guilty of an offense or something else?

t. Section DOC 303.43 (1) is unclear. Is the possession of approved glue or cough syrup acceptable or not? Perhaps changing the phrase "to include" to "including" would help clarify the rule's intent.

u. Section DOC 303.48 (5) is unclear. Is there a difference between mail and correspondence? Or is someone who sends correspondence guilty of an offense? This subsection needs to be clarified.

v. In s. DOC 303.48 (6), the phrase "including pubic hair" should be set off by commas.

w. In s. DOC 303.49 (intro.), the phrase "and the like" should be replaced by a more appropriate phrase like "and similar activities."

x. In s. DOC 303.60 (3), the term "etc." should be replaced by a more appropriate term or phrase, such as "or other form of gambling."

y. In s. DOC 303.63 (1) (L), the word "institutions" should be singular.

z. The rule should avoid the use of vague terms such as "recently" in s. DOC 303.65 (1) (b). Instead, a specific period of time should be set forth in the rule.

aa. In s. DOC 303.66 (2), what sections are being referred to? Sections of ch. DOC 303? The rule should be clarified.

ab. In the table in s. DOC 303.68 (3), "Paraphrenalia" is misspelled.

ac. The amended portion of s. DOC 303.68 (5) is unclear. "Once what" is classified as a major offense? Also, what is "any decision"? The intent of this provision should be clarified and drafted accordingly.

ad. The second sentence of s. DOC 303.69 (1) should be rewritten in substantially the following form: "An inmate who has served 8 consecutive days in adjustment segregation shall be released from adjustment segregation for one day and allowed any program segregation privileges under ____ or any disciplinary separation privileges under ____ that may apply to the inmate." Additionally, the word "It" at the beginning of the third sentence should be replaced by "Adjustment segregation."

ae. The word "necessarily" in s. DOC 303.69 (2) is vague. Who determines whether something can be kept in the cell and upon what basis is the decision made? Also, in par. (c), a period should be inserted after the word "pens" and the word "the" following "pens" should be capitalized. Finally, to be consistent with other paragraphs in the subsection, par. (e) should be begin with the phrase "Adequate meals," or a similar phrase. These last two sentences also apply to s. DOC 303.70 (2) (c) and (e).

af. In the first sentence of s. DOC 303.69 (12) (a), the word "segregation" should be inserted before the word "starts." What does the word "It" at the beginning of the second sentence refer to? Finally, in light of s. DOC 303.69 (1), the last two sentences of sub. (12) appear to be redundant. If they are, they should be deleted.

ag. Paragraphs (b) and (c) of s. DOC 303.69 (12) are unclear. First, appropriate cross-references to the provisions of the rules relating to program segregation and disciplinary separation should be provided. Second, why are these provisions located in the section on adjustment segregation? Is the intent of the rule to provide that program segregation is to be served concurrently to all other segregation or separation time, and that disciplinary separation is to be served concurrently with all other segregation statuses? Also, see s. DOC 303.73 (13).

ah. In s. DOC 303.71 (1), what is meant by "normally lasts"? It would seem appropriate to replace this phrase with a phrase such as "may be ordered." Also, in the last sentence, the phrase "this status" should be replaced with the phrase "controlled segregation."

ai. The word "They" in the second sentence of s. DOC 303.71 (6) (b) should be replaced with the phrase "Inmates in controlled segregation."

aj. In s. DOC 303.71 (7), the word "shall" should be inserted after the word "segregation" and the word "earns" in that sentence should be singular.

ak. In s. DOC 303.72 (3), "40" should be inserted after "~~a maximum of~~" to reflect the current rule.

al. The word "This" in the second sentence of s. DOC 303.72 (5) should be replaced by "Restitution."

am. In s. DOC 303.73 (1) (intro.), the word "It" in the second sentence should be replaced by "Disciplinary separation." The phrase "overcrowding prevents" should be replaced by "overcrowding at the institution requires otherwise." This last sentence also applies to ss. DOC 303.69 (1) (intro.) and 303.70 (1) (intro.).

an. In s. DOC 303.73 (8), the word "They" at the beginning of the second sentence should be replaced by the phrase "Inmates in disciplinary separation."

ao. In s. DOC 303.73 (9), the phrase "do not" should be replaced by the phrase "may not."

ap. The word "must" in the second sentence of s. DOC 303.73 (12) (intro.) should be replaced by "shall be" and the phrase "all of the following" should be inserted immediately before the colon in the last sentence.

aq. In s. DOC 303.73 (12) (a) 2. and 3., the word "factor" should be plural.

ar. In s. DOC 303.73 (12) (b), the word "inmate" should be replaced by the word "inmates."

as. In s. DOC 303.73 (12) (c) (intro.), the period should be replaced by a colon.

at. In s. DOC 303.73 (13), the word "time" should be inserted after the second and third occurrences of the word "program."

au. In s. DOC 303.74 (7) (intro.), a comma should be inserted before the word "both" in the first sentence and the word "earning" in the second sentence should be made plural. In pars. (a) and (b), the word "offense" should be inserted before the colon. This last sentence also applies to the schedule in s. DOC 303.84 (1) (L).

av. The meaning of "on visit" in s. DOC 303.74 (9) (b) should be clarified.

aw. In its attempt to avoid application of *State ex rel. Jones v. Franklin*, 444 N.W.2d 738 (Ct. App. 1989), it seems that the rule unnecessarily complicates s. DOC 303.75 (2). Instead of adding the vague language providing that the hearing "should not" be held later than 21 days after the conduct report is given, and including the sentence providing that the 21-day limit is

not jurisdictional, the same effect could be achieved by simply providing that the security director (or adjustment committee) may extend the 21-day limit for cause, as the rule does in the fourth sentence. This comment also applies to s. DOC 303.76 (3).

ax. In s. DOC 303.76 (1) (e) 4., the word "forbid" should be changed to "prohibit." This comment also applies to s. DOC 303.76 (5) (e).

ay. In s. DOC 303.76 (7) (c) 3., the phrase "all or in part" should be replaced by the phrase "in whole or in part." In addition, the subdivision provides that even if the decision is reversed in part, all records of the decision must be removed from the offender-based files. Is this the rule's intent?

az. In s. DOC 303.81 (8), the phrase "should be" ought to be replaced by the phrase "shall be."

ba. In the first sentence of s. DOC 303.82 (1), the term "a" should be "an" and the word "adjustment" inserted before "committee."

bb. In s. DOC 303.82 (2), the phrase "should find out" in the second sentence should be changed to "shall determine."

bc. In s. DOC 303.83 (9), the phrase "and the like" should be replaced by a more appropriate phrase that adequately describes the other factors that may be considered.

bd. In s. DOC 303.84 (1) (i), a comma should be inserted after "150."

be. On page 53 of the rule, the table heading "Offenses against and health" appears to be missing the word "safety."

bf. In the amendment to the Note to s. DOC 303.26, it appears that sentences 4 and 5 are in paragraph 1. This should be made clear in the amendment.

bg. In the amendment to the Note to s. DOC 303.27, what other paragraph is deleted?

bh. In the amendments to the Notes to ss. DOC 303.34 and 303.35, what paragraphs are the sentences deleted from?

bi. In the amendment to the Note to s. DOC 303.40, the phrase "to read" should be deleted from the second sentence. Also, what paragraph is the amended sentence 5 located in?

bj. In the amendment to the Note to s. DOC 303.64, the extra comma between 4 and 7 should be deleted.

bk. In the amendment to the Note to s. DOC 303.72, it appears that paragraph 1 only has three sentences. Thus, sentence 4 cannot be amended.

bl. In the third sentence of the amendment to the Note to s. DOC 303.73, what does the word "there" refer to? Also, the phrase "By law" in the last sentence should be better identified by an appropriate cross-reference.

bm. In the current Note to s. 303.76, the reader is asked in paragraph 4 to "See s. DOC 303.75 and Note." The amendment in the rule changes the cross-reference to s. DOC 303.77 but is silent on the Note. The amendment needs to address the reference to the Note. In addition, the language added to paragraph 4 should all be underscored because the paragraph is being amended. Also, in the case citation, the term "Wis." should be followed by "2d."

bn. It appears that the second amendment to the Note to s. DOC 303.81 is really an amendment to the Note to s. DOC 303.82.

Assembly Hearing Slip

(Please print plainly)

Date: 3-1-80

Bill No. CR 97-013
Or
Subject CR 97-013

Name) Carmy McCaughy
Box 351

(Street Address or Route Number)

Wausau, WI 53403
(City & ZIP Code)

Wisc. Dept. of Corrections
(Representing)

Speaking in favor: ☒

Speaking against: ☐

Registering in favor: ☐

Registering against: ☐

Speaking for information only:
Neither for nor against: ☐

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms:
Room 411 West
State Capitol
Madison, WI 53702



Scott Walker

Wauwatosa's Representative in the Wisconsin State Assembly

Oct. 2, 2000

TO: Members of the Assembly Committee on Corrections and the Courts

FROM: Rep. Scott Walker, Chair

RE: Clearinghouse Rule 97-013

The following clearinghouse rule has been submitted to the Assembly Committee on Corrections and the Courts:

CR 97-013 An order to repeal and recreate DOC 303, relating to inmate conduct, inmate discipline and procedures for the imposition of discipline.

The committee's jurisdiction on CR 97-013 ends Nov. 1, 2000. This rule, which previously came before the committee in February, has been re-submitted because of four typographical errors. Attached is a letter from the Department of Corrections explaining the nature of the errors set forth in the present rule. If you wish to request a hearing or need additional information, please contact Missy in my office at 266-9180.

Thank you.

Tommy G. Thompson
Governor

Jon E. Litscher
Secretary



**State of Wisconsin
Department of Corrections**

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September 28, 2000

Scott Jensen, Speaker
Wisconsin State Assembly
211 West, State Capitol
Madison, Wisconsin 53702

Fred Risser, President
Wisconsin State Senate
Room 102,
119 Martin Luther King Blvd.
Madison, Wisconsin 53702

Re: Clearinghouse Rule 97-013
A proposed order to repeal and recreate DOC 303, Relating to inmate conduct, inmate discipline and procedures for the imposition of discipline.

Gentlemen:

As provided in s. 227.19 (2), Wis. Stats., notice is given that the above-mentioned rule is in final draft form. This notice and the report required under s. 227.19 (2) and (3), Stats., are submitted in triplicate.

The rule was submitted to the Legislative Council for review under s. 227.15, Stats.. A copy of the Council's report is also enclosed.

If you have any questions regarding the rule, please contact Julie Kane at (608) 267-9839.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jon E. Litscher".
Jon E. Litscher
Secretary

Enclosures

Cc: Gary Poulson, Deputy Revisor of Statutes

Tommy G. Thompson
Governor

Jon E. Litscher
Secretary



State of Wisconsin
Department of Corrections

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September 28, 2000

The Honorable Roger Breske, Chairperson
Senate Committee on Insurance, Tourism, Transportation and Corrections
Room 18 South, State Capitol
Madison, Wisconsin 53707

The Honorable Scott Walker, Chairperson
Assembly Committee on Corrections and the Courts
Room 308 North, State Capitol
Madison, Wisconsin 53708

Re: Clearinghouse Rule 97-013
Proposed Rule to repeal and recreate DOC 303 relating to Inmate Conduct,
Inmate Discipline and the Procedures for Imposing Discipline.

Gentlemen:

On February 7, 2000, the Department submitted Clearinghouse Rule 97-013, relating to inmate conduct, inmate discipline, and procedures for the imposition of discipline, to the presiding officers of the Legislature for review by standing committees. Subsequently, the proposed rules were referred to your committees. The Assembly Committee held a hearing on March 1, 2000. Following a March 9, 2000 meeting of Department staff with Representative Goetsch and Representative Walker, the Department agreed to make germane modifications. Those modifications were accepted and the rule was reported out of committee.

However, the Department has recently learned of our need to correct four typographical errors in the rule. You will note that the penalty days for Program Segregation and Disciplinary Separation are exactly the same for each offense. Unfortunately, four numbers in the Schedule of Penalties are incorrect and do not reflect this intent. Therefore, the Department has resubmitted this rule for review with the following germane modifications.

September 28, 2000

Page Two

Please refer to the Schedule of Penalties Table DOC 303.84, page 26 of the attached draft.

303.26 Soliciting staff
Disciplinary Separation Penalty is changed from 180 to 360 days.

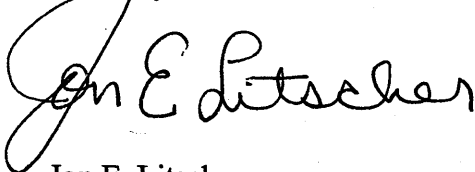
303.271 Lying about staff
Disciplinary Separation Penalty is changed from 180 to 360 days.

303.28 Disruptive conduct
Disciplinary Separation Penalty is changed from 180 to 360 days.

303.48 Unauthorized use of the mail
Disciplinary Separation Penalty is changed from 260 to 360 days.

Thank you for your anticipated cooperation in this matter. If you have any questions regarding the rule, please contact Julie Kane at (608) 267-9839.

Sincerely,

A handwritten signature in cursive script, reading "Jon E. Litscher". The signature is written in dark ink and is positioned above the printed name and title.

Jon E. Litscher
Secretary

Tommy G. Thompson
Governor

Jon E. Litscher
Secretary



State of Wisconsin
Department of Corrections

Mailing Address

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September 28, 2000

Bruce Munson
Revisor of Statutes
Suite 800
131 W. Wilson St.
Madison, Wisconsin 53703-3233

Re: Clearinghouse Rule 97-013
A proposed order to repeal and recreate DOC 303, Relating to inmate conduct,
inmate discipline and procedures for the imposition of discipline.

Dear Mr. Munson:

Enclosed is a notice that the above captioned proposed rule has been submitted in Final Draft Form to the presiding officer of each house of the legislature on September 28, 2000.

If you have any questions, please call me at 267-9839.

Sincerely,

A handwritten signature in cursive script, appearing to read 'JMKane'.

Julie M. Kane
Assistant Legal Counsel

Enclosure

NOTICE

NOTICE that on September 28, 2000, the Department of Corrections submitted to the presiding officers of each house of the Legislature in final draft form, Clearinghouse Rule 97-013, a proposed order to repeal and recreate DOC 303 relating to inmate conduct, inmate discipline and procedures for the imposition of discipline.

ASSEMBLY COMMITTEE ON CORRECTIONS AND THE COURTS

AGENDA

Wednesday, March 1, 2000

1:30 p.m.

G.A.R.

- I. Call to Order
- II. Roll Call
- III. Executive Session
 - A. **AB 743 (*Walker/Darling*)**
Relating to: probation, parole and extended supervision agents responsible for locating absconders.
- IV. Joint Informational Hearing w/ Criminal Justice
 - A. National Innocence Project/Wisconsin Innocence Project
- V. Public Hearing
 - A. **CR 97-013 (*DOC*)**
 - B. **AB 783 (*Goetsch/Huelsman*)**
Relating to: denial of a prisoner's request to bring an action.
 - C. **AB 784 (*Goetsch/Drzewiecki*)**
Relating to: limits on discovery requests in cases involving prisoner litigation.
- VI. Announcements
 - A. Committee hearing w/ DOC – 8:15 a.m. on March 8 in the North Hearing Room
 - B. Committee exec/public hearing – following session on March 8?
- VII. Adjournment

**PROPOSED ADMINISTRATIVE RULES – DOC 303,
RELATING TO INMATE CONDUCT, INMATE DISCIPLINE AND
THE PROCEDURE FOR IMPOSITION OF DISCIPLINE
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19 (3) STATS.**

Need for Rule

Some provisions of the department of corrections' administrative rules relating to inmate discipline have not been updated since the rule was created. With over 19 years of experience working with the rule, the department proposes to update the rule.

This rule governs inmate conduct, describes the conduct for which an inmate may be disciplined, and describes the procedure for the imposition of discipline.

Responses to Clearinghouse Recommendations

This rule was originally submitted to Legislative Council on January 29, 1997. All comments of the Legislative Council's Rules Clearinghouse Report were accepted.

The rule underwent significant changes in the following two years and was re-submitted informally to Legislative Council for review. Legislative Council gave a verbal review over the telephone and all comments were accepted.

Public Hearings

This rule received two sets of public hearings due to the amount of time elapsed and the number of changes made to the rule in the two years following the original hearings.

The department held six public hearings on the proposed rule.

The first set of public hearings was held in Waukesha and Madison on July 30, 1997 and in Eau Claire on August 12, 1997. Nobody appeared in person at any of these hearings. One written comment was received. The following is a summary of the written comment opposing the rule:

Fernando Escobar
Inmate
Fox Lake Correctional Institution
P.O. Box 147
Fox Lake, WI 53933

Respondent's Comments: Mr. Escobar writes that the proposed forfeitures are an abuse of prisoners' limited resources and a political move. Mr. Escobar writes that the proposed changes provide DOC and the institutions' wardens with too much discretionary authority and that none of the proposed changes are needed. Mr. Escobar writes that there is a lot of abuse toward

prisoners as well as a lot of racial tension among the white prison staff, its few minority puppets, and the minority prisoners.

Department Response: Contrary to Mr. Escobar's assertions, the proposed forfeitures are not an abuse of prisoners' limited resources or a political move. The forfeitures are justified by the legitimate penological interest in deterring inmate misbehavior. Mr. Escobar's comments regarding the wardens being given too much discretionary authority are not specific to any provision in Ch. 303, and the Department cannot respond to them. Likewise, Mr. Escobar's comments regarding prisoner abuse and racial tension in prisons are vague and have no specific reference to Ch. 303.

The second set of public hearings was held in Waukesha on December 15, 1999, Madison on December 16, 1999 and Eau Claire on December 17, 1999. Nobody appeared in person to give testimony or to register. No letters were submitted regarding the rule.

Modifications Made as a Result of Public Hearings

No modifications were made a result of public hearing testimony or letters. However, in the two years following the original public hearings, the Department made several changes to the rule based on internal policy discussions and decisions.

Final Regulatory Flexibility Analysis

This proposed rule is not expected to impact on small businesses as defined in s. 227.114 (1.)

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 97-013

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

What specific statutory authority exists for agency imposition of civil forfeitures on inmates?

2. Form, Style and Placement in Administrative Code

a. When two or more subsections, paragraphs, subdivisions or subparagraphs of the same rule sections are affected by the same treatment, they may be included in the same SECTION of the rule and the rule section number need not be repeated for each subunit of the section. [See s. 1.04 (2), Manual.] For example, in SECTION 1 of the rule, s. DOC 303.01 need not be repeated each time before the amendments made in subs. (2) and (3). [See also, e.g., SECTIONS 32, 41, 43, 57, 65, 67, 74 to 78, 93, 94, 95, 105, 106, 125 to 128, 138, 144, 146, 147, 151, 152, 168, 169, 179 and 180.] In addition, SECTIONS 25, 26, 27 and 28 of the rule could be combined because subsections of the same rule section are amended. [See also, e.g., SECTIONS 35 to 38, 39 and 40, 52 to 55, 69 to 72, 89 to 92, 99 to 102, 109 to 119, 122 to 123, 128 to 136, 139 to 143, 148 to 150, 155 to 158, 163 to 166, 174, 175, 177 and 178.]

b. Generally, if a rule provision containing a title is amended, the title is shown even if it is not amended [s. 1.05 (3) (d), Manual]. For example, the various subsections of s. DOC 303.05, which are amended by the rule, all contain titles in the current rule, yet no titles are shown in the amendments to those subsections. They should be.

c. In s. DOC 303.01 (1), the phrase "has the authority to" should be replaced by the word "may"; the word "provision" should be replaced by the word "subsection" or "section"; and the word "discipline" should be replaced by the word "disciplined."

d. In the treatment clause of SECTION 41, "(3)" need not be repeated after its first occurrence.

e. SECTION 43 of the rule, as well as other parts of the rule, uses the term "TLU." Since the term appears to be used throughout ch. DOC 303, it should be defined in the definition portion of the rule. In addition, although SECTION 43 of the rule purports to amend, among other things, s. DOC 303.11 (2), it appears that it really amends s. DOC 303.11 (3). The rule should be reviewed to ensure that its intent is correctly reflected.

f. Because SECTION 46 of the rule rennumbers s. DOC 303.12 as sub. (1), "(1)" need not be underscored.

g. The rule provisions contained in SECTIONS 69 to 72 of the rule all contain an "Exception." These exceptions should be redrafted so that the exception is grammatically and conceptually complete. For example, the exception in s. DOC 303.26 (3) could be rewritten as follows: "This subsection does not apply to hobby items"

h. The underscoring in s. DOC 303.271 (2) should be solid.

i. The treatment clause of SECTION 82 of the rule could be simplified as follows: "DOC 303.42 (1) (intro.) and (1) (a) to (d) are amended to read:".

j. The treatment clause of SECTION 84 should refer to s. DOC 303.46 (1).

k. The treatment clause of SECTION 85 should refer to s. DOC 303.47 (2) (a) to (d), since sub. (2) (intro.) is not amended. In addition, the word "is" should be deleted.

l. There are two SECTIONS numbered "95" and no SECTION 96.

m. In s. DOC 303.64 (3) (intro.) and (a), the phrases beginning with "See" should be reworded "as provided under . . ." and included in the sentences immediately preceding them.

n. No amendments are shown in s. DOC 303.67 (4) (a) and (b).

o. There are two SECTIONS numbered "128" and no SECTION 129.

p. In s. DOC 303.68 (1) (a), the notation "\$6-\$10" should be replaced by the notation "\$6 to \$10." The entire rule should be reviewed for this problem.

q. No part of the title in s. DOC 303.71 (5) should be underscored [s. 1.05 (3) (c), Manual]. This comment also applies to s. DOC 303.72 (8).

r. In s. DOC 303.76 (6), par. (e) is not structurally consistent with the remaining paragraphs.

s. The last sentence of s. DOC 303.81 (5) would be more appropriately placed in a note to the rule.

t. In SECTION 169 of the rule, there is no need to amend s. DOC 303.83 (1) (intro.), because sub. (1) does not contain an (intro.). It appears that s. DOC 303.83 (intro.) and (1) to (10) are amended. The SECTION should be modified accordingly.

u. The use of titles should be consistent in any unit of a rule. The rule creates a title for s. DOC 303.84 (1) (L) when none of the other paragraphs in that subsection have titles. The title should be deleted. If, on the other hand, the title as shown is not intended as a title, it should not be underscored.

v. SECTION 178 of the rule purports to amend s. DOC 303.84 (2) (e). However, no amendment is apparent. This SECTION should be reviewed.

w. In s. DOC 303.86 (2) (b) 1. and 2., the examples should be placed in a note to the rule. See, for example, s. DOC 303.86 (1) (b).

x. In the first sentence of s. DOC 303.86 (4), "If" should be replaced by "If" and "If" should be deleted.

y. In the amendment to the Note to s. DOC 303.13, the heading "Note: DOC 303.13" should be on a line separate from the amendment to the Note to s. DOC 303.12.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. DOC 303.02 (10), what is an "unsanctioned group"? If there is a formal sanctioning process for prison groups in the Administrative Code or the statutes, an appropriate cross-reference should be provided.

b. Section DOC 303.02 (11) refers to a "prison defined under intensive sanctions." Where is this definition? An appropriate cross-reference to a related statute or rule should be provided.

c. Based upon changes made in the rule, the reference to s. DOC 303.02 (17) in s. DOC 303.15 (1) (b) should be changed to a reference to s. DOC 303.02 (20).

d. SECTIONS 58 and 61 of the rule make reference to s. DOC 309.22. However, it does not appear that this section presently exists. Is that section created by another rule currently in the rules promulgation process? The reference to this nonexistent section should be explained or corrected.

e. The reference to "the rules" in s. DOC 303.48 (4) should contain a cross-reference to better identify which rules are referred to. In addition, the word "subsection" should be inserted after the word "This" in the second sentence.

f. In s. DOC 303.67 (4) (b), the notation "s." should be "ss.", as it is in the current rule.

g. The cross-reference in s. DOC 303.69 (8), relating to mechanical restraints, appears to be incorrect. The correct cross-reference appears to be s. DOC 303.09 (1).

h. Section DOC 303.73 (5) relates to sending mail according to departmental rules. The rule should provide an appropriate cross-reference to the departmental rules relating to sending mail. [See also s. DOC 303.69 (12) (b) and (c).]

i. In s. DOC 303.84 (1) (L), a reference to the schedule of forfeitures should be inserted after the phrase "only the \$1-5.00 amount" in the second sentence.

j. Section DOC 303.84 (2) (g) refers to an "administrative rule." This reference should be made more specific, such as "in this chapter" or "in ss. DOC ____ and ____."

k. In the amendment to the Note to s. DOC 303.70, the STEP program is referred to. What is this program and is there an appropriate cross-reference that can be provided? If so, the rule should be amended accordingly.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. DOC 303.01 (1), it is not clear what is meant by "another jurisdiction."

b. It is not clear from s. DOC 303.02 (17) what the last phrase of that subsection means. The relevance of what it means to be "an activity" should be clarified in the rule through the use of a note or the use of an appropriate cross-reference to an offense requiring that possession be an "activity." In addition, for purposes of clarity, it would be helpful to replace "or" with "or," end the sentence after "control" and begin a second sentence with the phrase "Possession is considered"

c. The phrase "the warden's" should be inserted between the words "or" and "designee" in s. DOC 303.02 (23).

d. The two dashes after the word "condition" in s. DOC 303.02 (24) (c) should be changed to a comma.

e. In s. DOC 303.05 (1), the phrase "alleged to have been violated under this chapter," or a substantially similar phrase should be added after the word "sections" in order to better identify the sections being referred to.

f. In s. DOC 303.06 (1) (intro.), the word "all" should be deleted. In addition, par. (a) should be clarified to better identify when the rule violation would have occurred. For example, the "something" that was intended would have been a rule violation if actually committed by the inmate. Finally, in par. (b), the phrase "at that time" should be replaced by the phrase "when the acts occurred."

g. In s. DOC 303.07 (1) (c), what does "this" refer to? The assistance or the offense? The rule should be clarified.

h. In s. DOC 303.10 (1) (a), the phrase "for example" should be replaced by the word "including."

i. In s. DOC 303.10 (3) (d), what is the distinction between the "owner" of property and the "true owner" of property? The distinction should be clarified. If there is no distinction, the rule should use consistent terminology.

j. Section DOC 303.11 (6) refers to "corrections industries." Chapter DOC 313, however, refers to "Prison Industries." Are these the same? If so, it would seem appropriate to use the term "prison industries" in ch. DOC 303, as well.

k. Can it be properly inferred from s. DOC 303.12 (2) that throwing some form of identified substance that is not spit, body fluid or waste, is not a separate offense?

l. The phrase "even while clothed" in s. DOC 303.15 (1) (f) should be replaced by the phrase "whether clothed or unclothed."

m. In s. DOC 303.20 (2) (d) the phrase "for example, to" should be replaced by "including."

n. It is not clear why, in light of the definition of "possession" contained in s. DOC 303.02 (17) and the plain language of s. DOC 303.20 (3), the second sentence of s. DOC 303.20 (3) is necessary. If it is necessary, it should be clarified to provide that the possession being referred to is possession of gang literature, creed, symbols or symbolisms. Also, what is meant by the phrase "may be viewed as"? Is hair sculpturing an "unsanctioned group activity" or is such a decision left up to the institution staff on a case-by-case basis? The rule should be clarified.

o. In s. DOC 303.21 (1), the word "forbidden" should be replaced by the word "prohibited."

p. The phrase "some conduct" in s. DOC 303.25 is vague. Who decides which conduct within treatment groups constitutes disrespect? The rule should be clarified.

q. In light of the definition of "public" provided in s. DOC 303.02 (18), the phrase "sale to the public" in s. DOC 303.26 (3), does not make much sense. Perhaps it would be possible to provide a more narrow definition of "public" which would only apply in certain situations. For example, the phrase "public expressions" could be defined for purposes of s. DOC 303.25 to be expressions made outside of the formal complaint process.

r. In s. DOC 303.271 (3), the addition of the word "the" in the second sentence does not add clarity to the rule. Which supervisor is to be contacted? The rule should identify which supervisor should be contacted. If the staff member is to contact his or her supervisor, the phrase "his or her" could be retained or the phrase "the staff member's" could be used.

s. It appears that s. DOC 303.41 is incomplete. Is an inmate who does any of the acts described guilty of an offense or something else?

t. Section DOC 303.43 (1) is unclear. Is the possession of approved glue or cough syrup acceptable or not? Perhaps changing the phrase "to include" to "including" would help clarify the rule's intent.

u. Section DOC 303.48 (5) is unclear. Is there a difference between mail and correspondence? Or is someone who sends correspondence guilty of an offense? This subsection needs to be clarified.

v. In s. DOC 303.48 (6), the phrase "including pubic hair" should be set off by commas.

w. In s. DOC 303.49 (intro.), the phrase "and the like" should be replaced by a more appropriate phrase like "and similar activities."

x. In s. DOC 303.60 (3), the term "etc." should be replaced by a more appropriate term or phrase, such as "or other form of gambling."

y. In s. DOC 303.63 (1) (L), the word "institutions" should be singular.

z. The rule should avoid the use of vague terms such as "recently" in s. DOC 303.65 (1) (b). Instead, a specific period of time should be set forth in the rule.

aa. In s. DOC 303.66 (2), what sections are being referred to? Sections of ch. DOC 303? The rule should be clarified.

ab. In the table in s. DOC 303.68 (3), "Paraphrenalia" is misspelled.

ac. The amended portion of s. DOC 303.68 (5) is unclear. "Once what" is classified as a major offense? Also, what is "any decision"? The intent of this provision should be clarified and drafted accordingly.

ad. The second sentence of s. DOC 303.69 (1) should be rewritten in substantially the following form: "An inmate who has served 8 consecutive days in adjustment segregation shall be released from adjustment segregation for one day and allowed any program segregation privileges under ____ or any disciplinary separation privileges under ____ that may apply to the inmate." Additionally, the word "It" at the beginning of the third sentence should be replaced by "Adjustment segregation."

ae. The word "necessarily" in s. DOC 303.69 (2) is vague. Who determines whether something can be kept in the cell and upon what basis is the decision made? Also, in par. (c), a period should be inserted after the word "pens" and the word "the" following "pens" should be capitalized. Finally, to be consistent with other paragraphs in the subsection, par. (e) should be begin with the phrase "Adequate meals," or a similar phrase. These last two sentences also apply to s. DOC 303.70 (2) (c) and (e).

af. In the first sentence of s. DOC 303.69 (12) (a), the word "segregation" should be inserted before the word "starts." What does the word "It" at the beginning of the second sentence refer to? Finally, in light of s. DOC 303.69 (1), the last two sentences of sub. (12) appear to be redundant. If they are, they should be deleted.

ag. Paragraphs (b) and (c) of s. DOC 303.69 (12) are unclear. First, appropriate cross-references to the provisions of the rules relating to program segregation and disciplinary separation should be provided. Second, why are these provisions located in the section on adjustment segregation? Is the intent of the rule to provide that program segregation is to be served concurrently to all other segregation or separation time, and that disciplinary separation is to be served concurrently with all other segregation statuses? Also, see s. DOC 303.73 (13).

ah. In s. DOC 303.71 (1), what is meant by "normally lasts"? It would seem appropriate to replace this phrase with a phrase such as "may be ordered." Also, in the last sentence, the phrase "this status" should be replaced with the phrase "controlled segregation."

ai. The word "They" in the second sentence of s. DOC 303.71 (6) (b) should be replaced with the phrase "Inmates in controlled segregation."

aj. In s. DOC 303.71 (7), the word "shall" should be inserted after the word "segregation" and the word "earns" in that sentence should be singular.

ak. In s. DOC 303.72 (3), "10" should be inserted after "~~a maximum of~~" to reflect the current rule.

al. The word "This" in the second sentence of s. DOC 303.72 (5) should be replaced by "Restitution."

am. In s. DOC 303.73 (1) (intro.), the word "It" in the second sentence should be replaced by "Disciplinary separation." The phrase "overcrowding prevents" should be replaced by "overcrowding at the institution requires otherwise." This last sentence also applies to ss. DOC 303.69 (1) (intro.) and 303.70 (1) (intro.).

an. In s. DOC 303.73 (8), the word "They" at the beginning of the second sentence should be replaced by the phrase "Inmates in disciplinary separation."

ao. In s. DOC 303.73 (9), the phrase "do not" should be replaced by the phrase "may not."

ap. The word "must" in the second sentence of s. DOC 303.73 (12) (intro.) should be replaced by "shall be" and the phrase "all of the following" should be inserted immediately before the colon in the last sentence.

aq. In s. DOC 303.73 (12) (a) 2. and 3., the word "factor" should be plural.

ar. In s. DOC 303.73 (12) (b), the word "inmate" should be replaced by the word "inmates."

as. In s. DOC 303.73 (12) (c) (intro.), the period should be replaced by a colon.

at. In s. DOC 303.73 (13), the word "time" should be inserted after the second and third occurrences of the word "program."

au. In s. DOC 303.74 (7) (intro.), a comma should be inserted before the word "both" in the first sentence and the word "earning" in the second sentence should be made plural. In pars. (a) and (b), the word "offense" should be inserted before the colon. This last sentence also applies to the schedule in s. DOC 303.84 (1) (L).

av. The meaning of "on visit" in s. DOC 303.74 (9) (b) should be clarified.

aw. In its attempt to avoid application of *State ex rel. Jones v. Franklin*, 444 N.W.2d 738 (Ct. App. 1989), it seems that the rule unnecessarily complicates s. DOC 303.75 (2). Instead of adding the vague language providing that the hearing "should not" be held later than 21 days after the conduct report is given, and including the sentence providing that the 21-day limit is

not jurisdictional, the same effect could be achieved by simply providing that the security director (or adjustment committee) may extend the 21-day limit for cause, as the rule does in the fourth sentence. This comment also applies to s. DOC 303.76 (3).

ax. In s. DOC 303.76 (1) (e) 4., the word "forbid" should be changed to "prohibit." This comment also applies to s. DOC 303.76 (5) (e).

ay. In s. DOC 303.76 (7) (c) 3., the phrase "all or in part" should be replaced by the phrase "in whole or in part." In addition, the subdivision provides that even if the decision is reversed in part, all records of the decision must be removed from the offender-based files. Is this the rule's intent?

az. In s. DOC 303.81 (8), the phrase "should be" ought to be replaced by the phrase "shall be."

ba. In the first sentence of s. DOC 303.82 (1), the term "a" should be "an" and the word "adjustment" inserted before "committee."

bb. In s. DOC 303.82 (2), the phrase "should find out" in the second sentence should be changed to "shall determine."

bc. In s. DOC 303.83 (9), the phrase "and the like" should be replaced by a more appropriate phrase that adequately describes the other factors that may be considered.

bd. In s. DOC 303.84 (1) (i), a comma should be inserted after "150."

be. On page 53 of the rule, the table heading "Offenses against and health" appears to be missing the word "safety."

bf. In the amendment to the Note to s. DOC 303.26, it appears that sentences 4 and 5 are in paragraph 1. This should be made clear in the amendment.

bg. In the amendment to the Note to s. DOC 303.27, what other paragraph is deleted?

bh. In the amendments to the Notes to ss. DOC 303.34 and 303.35, what paragraphs are the sentences deleted from?

bi. In the amendment to the Note to s. DOC 303.40, the phrase "to read" should be deleted from the second sentence. Also, what paragraph is the amended sentence 5 located in?

bj. In the amendment to the Note to s. DOC 303.64, the extra comma between 4 and 7 should be deleted.

bk. In the amendment to the Note to s. DOC 303.72, it appears that paragraph 1 only has three sentences. Thus, sentence 4 cannot be amended.

bl. In the third sentence of the amendment to the Note to s. DOC 303.73, what does the word "there" refer to? Also, the phrase "By law" in the last sentence should be better identified by an appropriate cross-reference.

bm. In the current Note to s. 303.76, the reader is asked in paragraph 4 to "See s. DOC 303.75 and Note." The amendment in the rule changes the cross-reference to s. DOC 303.77 but is silent on the Note. The amendment needs to address the reference to the Note. In addition, the language added to paragraph 4 should all be underscored because the paragraph is being amended. Also, in the case citation, the term "Wis." should be followed by "2d."

bn. It appears that the second amendment to the Note to s. DOC 303.81 is really an amendment to the Note to s. DOC 303.82.

Tommy G. Thompson
Governor



Jon E. Litscher
Secretary

State of Wisconsin

Department of Corrections

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March 27, 2000

The Honorable Roger Breske, Chairperson
Senate Committee on Insurance, Tourism, Transportation and Corrections
Room 18 South, State Capitol
Madison, Wisconsin 53707

The Honorable Scott Walker, Chairperson
Assembly Committee on Corrections and the Courts
Room 308 North, State Capitol
Madison, Wisconsin 53708

Re: Clearinghouse Rule 97-013
Proposed Rule to repeal and recreate DOC 303 relating to Inmate Conduct, Inmate Discipline and the Procedures for Imposing Discipline.

Gentlemen:

On February 7, 2000, the Department submitted Clearinghouse Rule 97-013, relating to inmate conduct, inmate discipline, and procedures for the imposition of discipline, to the presiding officers of the Legislature for review by standing committees. Subsequently, the proposed rules were referred to your committees. The Assembly Committee held a hearing on March 1, 2000. Following a March 9, 2000 meeting of Department staff with Representative Goetsch and Representative Walker, the Department agreed to make germane modifications. Today, the Department is resubmitting the proposed rules, with germane modifications, to the committees. A copy of the revised CR 97-013 is attached to this letter.

Following are the modifications the Department has made in CR 97-013. These are:

- (1) Restore definition of "harass" to "annoy or irritate persistently."
- (2) Sec. 303.10(2): remove language "institution policies" and insert "Division Internal Management Procedures."
- (3) Sec. 303.10(4) is created to read "Inmates shall report any property item that becomes damaged."
- (4) Sec. 303.11(4): delete "it is possible that one or more of the following is true" and insert "one or more of the following is present."

March 27, 2000

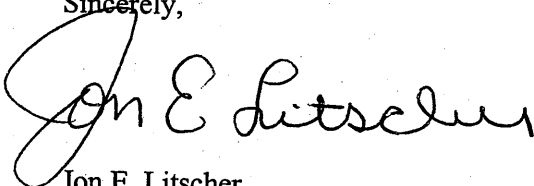
Page Two

- (5) Sec. 303.27: restore language "which may affect the integrity, safety or security of the institution."
- (6) Sec. 303.271: insert "which may affect the integrity, safety or security of the institution or staff."
- (7) Sec. 303.62: restore language "and who has the ability to meet those standards."
- (8) Sec. 303.07(4): restore language "The principal should, if possible, be identified when the inmate is charged."
- (9) Sec. 303.55: restore language "provided the inmate had knowledge of the condition of his or her quarters and had the opportunity to clean or rearrange it."
- (10) Sec. 303.56(1): restore language "and who has knowledge of this condition and the opportunity to correct it, but does not."
- (11) Sec. 303.10(3): insert language "If the inmate files a grievance regarding the seizure or disposition of the property, the institution shall retain property until the warden makes a final decision on the grievance."
- (12) Restore Sec. 303.73 to read : "**DOC 303.73 Referral for prosecution.** The warden shall work with the local district attorney and determine when violations that may violate criminal statute shall be referred for prosecution."

These changes are reflected in the analysis preceding the proposed rule language. Also reflected in the new analysis is the removal of two items that were in error. Sections C14 and F4 have been removed from the analysis because these items are not included in the proposed rule and were in the analysis by error.

If you have any questions regarding the rule, please contact Julie Kane at (608) 267-9839.

Sincerely,



Jon E. Litscher
Secretary

PROPOSED ORDER OF THE
DEPARTMENT OF CORRECTIONS
REPEALING AND RECREATING RULES

Wisconsin Department of Corrections proposes an order to repeal and recreate Chapter DOC 303 relating to inmate conduct, inmate discipline, and procedures for the imposition of discipline.

Statutory authority: s. 227.11 (2), Stats.

Statutes interpreted: s. 302.07, 302.08, 302.11 (2) and 302.04, Stats.

Analysis Prepared by the Department of Corrections

Some provisions of the department of corrections administrative rule relating to inmate discipline have not been updated since the rule was created in 1980. With over 19 years of experience working with the rule, the department proposes to update the rule.

This rule governs inmate conduct, describes the conduct for which an inmate may be disciplined, and describes the procedure for the imposition of discipline.

A. This rule generally:

1. Broadens the authority of each institution to make specific substantive disciplinary policies and procedures.
2. Applies the rule to all inmates in the custody of the department regardless of the inmate's physical custody. The rule does not preclude another jurisdiction that has the physical custody of the inmate from enforcing its rules. The department may not discipline an inmate for an incident for which the inmate was disciplined in another jurisdiction.
3. Recognizes the right of an inmate to call witnesses outweighs the right of a witness to refuse to testify.
4. Recognizes that any violation of disciplinary rules in an institution is a serious threat to safety and security and removes the elements of "knowingly," "recklessly," "intentionally," and "negligently" from most offenses.

B. This rule makes the following definition changes:

1. Removes the definition of "overt behavior."
2. Adds definitions for "working days," "public," "temporary lock up (TLU)," "institution," "staff", and "adjustment committee".

3. Amends the definition of "discipline" to state what it is and to eliminate that portion of the definition that states what it is not.
4. Amends the definition of "authorized" to eliminate the requirement that policies and procedures be posted and also changes the definition from the "latest order" of a staff member to the "direction" of a staff member.
5. Amends the definition of "administrator" by deleting "division of adult institutions."
6. Amends the definition of "harass" by deleting the word "persistently."
7. Amends the definition of "possession" by adding that the department considers possession an activity under 303.20 (3).
8. Amends the definition of "inmate gang" to eliminate specified activities which define a gang.
9. Changes the definition of "superintendent" to "warden".
10. Amends the definition "without consent" by removing language stating how the actor put the victim in fear.
11. Expands the definition of "contraband" by adding "property that is damaged or altered" and "anything used as evidence for a disciplinary hearing deemed contraband by the adjustment committee or hearing officer."
12. Deletes the definitions relating to state of mind: "intentionally", "knowingly," "recklessly," and "negligently" as these are also removed as elements of most offenses.
13. Deletes the definition of "device" under the offense of "Possession of drug paraphernalia."
14. Deletes "with intent to deprive the owner of it permanently" from the definition of "steals."

C. This rule adds the following offenses for which an inmate may be disciplined:

1. Causing bodily injury by spitting or throwing body fluids, waste, or other unidentified substances.
2. Intentionally causing the death of another.
3. Intentionally causing bodily injury or the unauthorized death of an animal.

4. Clutching, fondling, or touching the inmate's intimate parts for the purpose of sexual arousal or gratification or for purposes of exhibition whether clothed or unclothed.
5. Stating affection or sexual desire, verbally or in writing, whether personally written or commercially written or by drawings to staff members or the family of a staff member, or asks staff members or the family of a staff member for any staff member or the family of staff member's addresses, phone numbers, or favors, or in any manner requests special attention or action from a staff member or the family of staff members that is not appropriate.
6. Possessing any gang literature, creed, signal, or symbol.
7. Showing disrespect to any staff. Staff is defined to mean an employee, an independent contractor, or a volunteer of the department or an institution or facility where an inmate is housed by order of a court, a warden or the department.
8. Using a name other than the name by which the inmate was committed to the department. (deletes the words "unless the name was legally changed")
9. Ordering and buying an item on credit.
10. Possession of a credit card.
11. Misrepresenting facts to another to obtain items of value.
12. Possession of an item which "could" be used in the manufacture of a weapon. The item need not be "designed exclusively" as a weapon.
13. Possession of personal written information relating to any staff of the department, including a staff's or staff's immediate family home address or telephone number.
14. Causing damage to property by reckless conduct.
15. Altering or erasing a postal cancellation mark or possessing any postage stamp that has been altered.
16. Attempting to circumvent the rules by sending a second envelope or letter intended to be mailed else where within a sealed envelope.
17. Sending food samples through the mail.
18. Sending body fluids or body wastes through the mail.
19. Sending correspondence, which harms, harasses or intimidates any person.
20. Possessing gambling or betting pool or lottery material.

21. Participating in a lottery.
22. Refusing to provide a body specimen, submit to a physical examination, or a breathalyzer test is an offense of use of intoxicants.
23. Failure to meet the standards set for performance on a job or school program regardless of "ability" to meet the standards.
24. Improperly disposing of any prescription medication.

D. This rule modifies the following offenses:

1. Broadens the definition of "conspiracy" by making it an offense for inmates to plan or agree with inmates or "others" to do acts prohibited by these rules.
2. Changes "Attempt" from a necessity to find both 303.06(1) (a) and (b) to a finding of "either" for guilt.
3. Changes "Aiding and abetting" to an offense if inmate acts in concert with "another" and not just another inmate, and removes the requirement for staff to name the principal actor when charging inmate.
4. Removes the language "knowledge of the condition of his or her quarters and had the opportunity to clean or rearrange it" from the offense of "dirty quarters."
5. Removes the language "knowledge of this condition and the opportunity to correct it" from the offense of "poor grooming."
6. Adds solicitation of "acquaintance" to the offense of "soliciting staff."
7. Exempts the formal complaint process from the offense "disrespect."

E. This rule deletes the following specific offenses:

1. "Possession of excess smoking materials."
2. "Talking."
3. "Attire."

F. This rule modifies disciplinary penalties and procedures to provide:

1. A new penalty--disciplinary separation. Disciplinary separation is being added to the major penalty selection as an alternative to program segregation. The difference is it is

less punitive for the first time offender or the offender who normally follows the rules. That difference being there is not an automatic extension of mandatory release date with disciplinary separation. By law, program segregation requires an extension of one day for every 2 days served.

2. Removes specific requirements that each institution (a) maintain a bulletin board for bulletins of general applicability; (b) post bulletins on such bulletin boards at time of alleged violation in order to administer discipline for violations; and (b) maintain a notebook of current bulletins. Requires, instead, that institutions maintain at least one official method and location for notifying inmates about notices of general applicability.
3. Removes requirement that inmate have actual knowledge or have received copy of bulletins before discipline may be imposed.
4. Inmates in segregation shall have a copy of all bulletins that are applicable to the inmate.
5. Removes specific instructions regarding seizure and disposition of contraband and provides that the hearing officer, adjustment committee, or security director shall dispose of items in accordance with institution policies and procedures.
6. Deletes the listing of absolute defenses available to inmates charged with rule violations.
7. Restitution may include escape expenses and any other expense caused by the inmate's actions whether intentional or reckless.
8. Adds possession of intoxicants and possession of drug paraphernalia to major penalties.
9. Grants inmates the right to request, regardless of other evidence, a confirmatory test for intoxicating substances following an initial positive result.
10. Grants inmates in adjustment segregation the opportunity to exercise outside the cell at least once every eight days.
11. The time periods for adjustment segregation are consecutive to the time in adjustment segregation and concurrent to the time in program segregation.
12. The time periods in program segregation are concurrent to all segregation or disciplinary separation time.
13. Specifies that time in TLU cannot be considered as time served.
14. TLU is changed in the following ways:

- Changes security director placement review from "next working day" to "within 2 working days," and;
 - Allows administrator to extend TLU for 21 days but removes words "for cause," and;
 - Allows inmate to be in TLU if decision-maker believes certain elements are "possible." This is changed from "more likely than not."
 - Provides for treatment of inmates in a private sector/prison industry enhancement certification program
15. Loss of recreation privileges for inmates in the general population is 1 to 60 days for a minor penalty and more than 60 days for a major penalty.
 16. Loss of recreation privileges for inmates in segregation is 1 to 8 days for a minor penalty and 9 to 60 days for a major penalty.
 17. Room confinement for minor penalty is increased from a maximum of 10 days to a period of 1 to 15 days and a major penalty is 16 to 30 days.
 18. Building confinement for a minor penalty is set at 1 to 30 days and a major penalty is a period more than 30 days.
 19. Days in program segregation may be 150, 210, 240, 270, 330, or 360 days in addition to the current 30, 60, 90, 120, and 180.
 20. Maximum days in segregation have been increased for the following offenses to:

a. Sexual conduct	8 and 180
b. Fighting	360
c. Lying	180
d. False names & titles	180
e. Gambling	180
 21. Allows the adjustment committee, upon a finding of guilt, to refer the inmate to program review to review the inmate's program assignment and custody level.
 22. Removes the enumerated list of factors the warden must consider when reviewing inmate program segregation status, while still providing for review at least once every 30 days.
 23. Adds "secure work crew" as a minor disciplinary sanction.
 24. Removes requirement that "only persons who are eligible to serve on the adjustment committee" serve as hearing officers for minor violations.

25. Allows the use of electronic conferencing for minor and major hearings.
26. Inmate's agreement to summary disposition is not appealable.
27. The 21-day time limit for disciplinary hearings is not jurisdictional.
28. Increases the time limit for the warden to review all records and forms pertaining to an appeal of a finding of guilt for a major offense from 10 days to within 60 days following receipt of request for appeal.
29. A dismissed conduct report serves as a warning that the behavior specified in the conduct report is a violation of the rules.
30. Removes the provision that property shall not be disposed of until the grievance is resolved.
31. Removes specific section on "referral for prosecution." Section 303.64 does maintain security director authority to refer a criminal law violation to law enforcement authorities for further investigation and prosecution.
32. Permits the warden to designate an investigator to do the investigation and write the conduct report.
33. The warden may assign staff members to act as inmate advocate during disciplinary hearings and remove the language allowing inmates to choose the advocate from a list of 3 possible candidates.
34. Removes recommendation that "a training program for advocates should be conducted as often as possible."
35. The security director may, for good cause, waive time limits for due process hearing requests.
36. Tolls the time for commencing due process hearing when an inmate is in observation, control segregation, out of the institution by court or warden's order.
37. Removes the requirement that the hearing officer investigate whether a witness should be called.
38. Removes the language allowing inmates to opt-out of testifying at a disciplinary hearing for another inmate.
39. If testifying at a disciplinary hearing would pose a risk of harm to a witness, the committee may, instead, consider a "corroborated, signed statement under oath from that witness" (makes the language consistent with section 303.86(4) Evidence).

Chapter DOC 303

DISCIPLINE

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Note: Several sections in this chapter have explanatory material which can be found in the appendix following the last section in this chapter.

Note: Chapter HSS 303 was renumbered chapter DOC 303 and revised under s. 13.93 (2m) (b) 1., 2., 4. to 7., Stats., Register, April, 1990, No. 412.

**Subchapter I -
General Provisions**

DOC 303.01 Applicability and purposes. (1) Pursuant to authority vested in the department of corrections by s. 227.11 (2), Stats., the department adopts this chapter which applies to the department of corrections and to all inmates in its legal custody pursuant to a judgment of conviction or court order regardless of the inmate's physical custody. The department may discipline inmates in its legal custody. This subsection does not preclude another jurisdiction that has physical custody of the inmate from enforcing its rules related to inmate behavior. The department may not discipline an inmate for an incident for which the inmate was disciplined in another jurisdiction. This section implements ss. 302.07, 302.08, 302.11 (2) and 302.04, Stats. The rules governing inmate conduct under this chapter describe the conduct for which an inmate may be disciplined and the procedures for the imposition of discipline.

(2) "Discipline" includes the sanctions described in DOC 303.68.

(3) The objectives of the disciplinary rules under this chapter are the following:

- (a) The maintenance of order in correctional institutions.
- (b) The maintenance of a safe setting in which inmates can participate in constructive programs.
- (c) The rehabilitation of inmates through the development of their ability to live with others, within rules.
- (d) Fairness in the treatment of inmates.
- (e) The development and maintenance of respect for the correctional system and for our system of government through fair treatment of inmates.

- DOC 303.75 Hearing procedure for minor violations.
- DOC 303.76 Hearing procedure for major violations.
- DOC 303.78 Due process hearing: advocates.
- DOC 303.81 Due process hearing: witnesses.
- DOC 303.82 Adjustment committee.
- DOC 303.83 Sentencing considerations.
- DOC 303.84 Sentencing procedure and schedule of penalties.
- DOC 303.85 Recordkeeping.
- DOC 303.86 Evidence.
- DOC 303.87 Harmless error.

(f) Punishment of inmates for misbehavior.

(g) Deterrence of misbehavior.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1987, No. 378.

DOC 303.02 Definitions. In this chapter:

- (1) "Adjustment committee" means adjustment committee or hearing officer.
- (2) "Administrator" means an administrator of a division of the department of corrections, or designee.
- (3) "Authorized" means any of the following:
 - (a) According to departmental rules.
 - (b) According to policies and procedures.
 - (c) According to the direction of a staff member.
 - (d) According to established institution custom.
 - (e) With permission from the appropriate staff member.
- (4) "Bodily injury" means injury or physical pain, illness or any impairment of physical condition.
- (5) "Case record" means any file folder or other method of storing information which is accessible by the use of an individual inmate's name or other identifying symbol.
- (6) "Communicate" means any of the following:
 - (a) To express verbally.
 - (b) To express in writing.
 - (c) To express by means of a gesture or other action.
- (7) "Consent" means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. A person under 15 years of age is incapable of consent as a matter

of law. The department presumes that the following persons are incapable of consent but the presumption may be rebutted by competent evidence:

- (a) A person who is 15 to 17 years of age.
- (b) A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct.
- (c) A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.
- (8) "Department" means the department of corrections.
- (9) "Division" means the division of adult institutions, department of corrections.
- (10) "Harass" means to annoy or irritate.
- (11) "Inmate gang" means a group of inmates which is not sanctioned by the warden under DOC 309.22.
- (12) "Institution" means a correctional institution, correctional facility, or center or a prison defined under intensive sanctions in ch. DOC 333 or a facility that the department contracts with for services to inmates.
- (13) "Intimate parts" means breast, penis, buttocks, scrotum, or vaginal area or any other parts of the body that may result in sexual arousal or gratification for either party.
- (14) "Intoxicating substance" means anything which if taken into the body may alter or impair normal mental or physical functions. Tobacco is not included.
- (15) "Negotiable instrument" is a writing, signed by the maker or drawer, which contains a promise to pay which is payable on demand or at a specified time, and which is payable to the order of the bearer.
- (16) "Possession" means on one's person, in one's quarters, in one's locker or under one's physical control. The department considers possession an activity under 303.20 (3).
- (17) "Public" means outside of the inmate complaint review system.
- (18) "Security director" means the security director at an institution, or designee.
- (19) "Sexual contact" means any of the following:
 - (a) Kissing except for that allowed under policy and procedures of an institution.
 - (b) Handholding except for that allowed under policy and procedures of an institution.
 - (c) Touching by the intimate parts of one person to any part of another person whether clothed or unclothed.

(d) Any touching by any part of one person or with any object or device of the intimate parts of another person or any other parts of the body that may result in sexual arousal or gratification for either party except as provided for in s. DOC 309.11 (2).

(20) "Sexual intercourse" means any penetration, however slight, by the penis into the mouth, vagina, or anus of another person, or any penetration by any part of the body or an object into the anus or vagina of another person.

(21) "Staff" means any state employe, an employe of a contract facility, an independent contractor, or a volunteer of the department or institution.

(22) "TLU" means temporary lock up which is a nonpunitive segregated status allowing an inmate to be removed from the general population pending further administrative action.

(23) "Warden" means the warden at an institution, or the warden's designee.

(24) "Without consent" means no consent in fact or that consent is given for any of the following reasons:

- (a) Because the actor put the victim in fear.
- (b) Because the actor purported to be acting under legal authority.
- (c) Because the victim did not understand the nature of the thing to which the victim consented.

(25) "Working days" means all days except Saturdays, Sundays, and state legal holidays.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; renum. (14) to (16) to be (16) to (18), cr. (14) and (15), Register, April, 1985, No. 352, eff. 5-1-85; emerg. renum. (9) to (18) to be (10) to (19), cr. (9) eff. 12-5-86; renum. (9) to (18) to be (10) to (19), cr. (9), Register, June, 1987, No. 378, eff. 7-1-87; cr. (12m), Register, April, 1994, No. 460, eff. 5-1-94.

DOC 303.03 Lesser included offenses. (1) If one offense is a lesser included offense of another, then if the reporting staff member charges an inmate with the greater offense, the staff member has charged the inmate with the lesser included offense.

(2) The adjustment committee may find an inmate guilty of a lesser included offense of the offense charged, even if the reporting staff member did not expressly charge the inmate with the lesser included offense.

(3) The adjustment committee may not find an inmate guilty of 2 offenses or punish the inmate for 2 offenses based on a single incident if one offense is a lesser included offense of the other.

(4) The adjustment committee may not find an offense a lesser included offense of another unless it is so listed in the following table:

Table DOC 303.03

Greater offense

Lesser included offense

303.07 Aiding and abetting	303.06 Attempt
303.12 Battery	303.05 Conspiracy
303.13 Sexual assault—intercourse	303.17 Fighting
303.14 Sexual assault—contact	303.28 Disruptive conduct
303.17 Fighting	303.14 Sexual assault— contact
303.18 Inciting a riot	303.15 Sexual conduct
303.19 Participating in a riot	303.15 Sexual conduct
303.22 Escape	303.28 Disruptive conduct
303.34 Theft	303.19 Participating in a riot
303.37 Arson	303.20 Group resistance and petitions
303.38 Causing an explosion or fire	303.28 Disruptive conduct
303.42 Possession of money	303.20 Group resistance and petitions
303.43 Possession of intoxicants	303.28 Disruptive conduct
303.44 Possession of drug paraphernalia	303.51 Leaving assigned area
303.45 Possession, manufacture, and alteration of weapons	303.40 Unauthorized transfer of property
303.57 Misuse of prescription medicine	303.47 Possession of contraband— miscellaneous
Any substantive offense	303.38 Causing an explosion or fire
	303.39 Creating a hazard
	303.47 Possession of contraband— miscellaneous
	303.39 Creating a hazard
	303.47 Possession of contraband— miscellaneous
	303.40 Unauthorized transfer of property
	303.47 Possession of contraband— miscellaneous
	303.47 Possession of contraband— miscellaneous
	303.47 Possession of contraband— miscellaneous
	303.40 Unauthorized transfer of property
	303.05 Conspiracy
	303.06 Attempt
	303.07 Aiding and abetting

(5) After each note to a substantive offense under this chapter, all offenses which are lesser included offenses of the offense are listed, except that aiding and abetting, attempt, and conspiracy are not listed. They are always lesser included offenses of the completed offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. (4), Register, April, 1985, No. 352, eff. 5-1-85.

DOC 303.05 Conspiracy. (1) If 2 or more inmates or others plan or agree to do acts which are prohibited under this chapter, all inmates may be guilty of an offense.

(2) An inmates who plans or agrees with individuals to do acts which are forbidden under this chapter is guilty of an offense.

(3) The penalty for conspiracy may be the same as the penalty for the most serious of the planned offenses.

(4) The number used for conspiracies in recordkeeping and conduct reports shall be the offense's number plus the suffix C.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; renum. (2) to be (3), cr. (2), Register, April, 1994, No. 460, eff. 5-1-94.

DOC 303.06 Attempt. (1) An inmate is guilty of attempt to violate a rule if either of the following are true:

(a) The inmate planned to do something which would have been a rule violation if actually committed.

(b) The inmate did acts which showed a plan to violate the rule when the acts occurred.

(2) The number used for attempts in recordkeeping and conduct reports shall be the offense's number plus the suffix A.

Note: Battery is DOC 303.12. Attempted battery is DOC 303.12-A.

(3) The penalty for an attempt may be the same as for the completed offense. See Table DOC 303.84.

(4) Staff may charge an inmate with both a substantive offense and attempt to commit that offense, based on the same incident, but may find an inmate guilty of only one.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.07 Aiding and abetting. (1) An inmate who does any of the following is guilty of aiding and abetting a rule violation:

(a) Tells or hires another to commit a rule violation.

(b) Assists another in planning or preparing for a rule violation.

(c) Assists another during commission of an offense, whether or not the assistance was planned in advance.

(d) Assists another to prevent discovery of a violation or the identity of the person who committed it.

(2) The institution shall use the offense's number plus the suffix B for aiding and abetting in record keeping and conduct reports.

Note: Battery is DOC 303.12. Aiding and abetting a battery is DOC 303.12-B.

(3) The reporting staff member may charge an inmate with both a substantive offense and aiding and abetting that offense, based on the same incident, but the adjustment committee may find the inmate guilty of only one offense.

(4) The reporting staff member may charge and the adjustment committee may find an inmate guilty of aiding and abetting even if no one is charged or found guilty of committing the offense.

(5) The adjustment committee may impose the same penalty for aiding and abetting as for the substantive offense. See Table DOC 303.84.

(6) The adjustment committee need not base the penalty given to an inmate who aids and abets in any way on the penalty, if any, given to the inmate who actually committed the offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.08 Institutional policies and procedures.

(1) As provided under this chapter, institutions may make specific policies and procedures and provide that if inmates violate them, they may be disciplined.

(2) Each institution shall maintain at least one official method and location for notifying inmates about notices of general applicability.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.09 Manual of disciplinary rules. (1) The department shall print all of the sections under this chapter, along with their notes, in pamphlet or other available form, and distribute it to inmates when they enter the prison system.

(2) Each institution shall make copies of this pamphlet and any published changes available to every inmate.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.10 Seizure and disposition of contraband.

(1) "Contraband" means any of the following:

(a) Any item which inmates may not possess under this chapter or is not authorized by the institution.

(b) Any item which is not state property and is on the institution grounds but not in the possession of any person.

(c) Any allowable item which comes into an inmate's possession through unauthorized channels or which is not on the inmate's property list and is required to be.

(d) Stolen property.

(e) Property that is damaged or altered.

(f) Anything used as evidence for a disciplinary hearing deemed contraband by the adjustment committee or hearing officer.

(2) **SEIZURE.** Any staff member who believes that an item is contraband may seize the item. The institution shall return property which is not contraband to the owner or dispose of the property in accordance with institution policies and procedures.

(3) **DISPOSITION.** The hearing officer, adjustment committee, or security director shall dispose of items in accordance with institution policies and procedures.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.11 Temporary lockup: use (1) A security supervisor, security director, or warden may place an inmate in temporary lockup or TLU.

(2) If the security supervisor places an inmate in temporary lockup, the security director shall review this action within 2 working days. Before this review and the review provided for in sub. (3), the institution shall provide the inmate with the reason for confinement in TLU and with an opportunity to respond, either orally or in writing. If upon review, the security director determines that TLU is not appropriate, the institution shall release the inmate from TLU immediately.

(3) The institution shall not allow any inmate to remain in TLU more than 21 days, except that the warden may extend this period for up to 21 additional days. The administrator may extend an inmate's time in TLU for a second time. The security director shall review the status of each inmate in TLU every 7 days to determine whether TLU continues to be appropriate.

(4) The institution may place an inmate in TLU and keep the inmate there if the decision maker believes that it is possible that one or more of the following is true:

(a) If the inmate remains in the general population, the inmate may impede a pending investigation or disciplinary action.

(b) If the inmate remains in the general population, it may be disruptive to the operation of the institution.

(c) If the inmate remains in the general population, it may create a danger to the physical safety of the inmate or another.

(d) If the inmate remains in the general population, it may create a danger that the inmate will try to escape from the institution.

(5) Institution staff shall document the reasons for TLU placement and shall notify the inmate of the reasons.

(6) The institution shall continue to compensate an inmate who had been earning institution compensation at the rate earned in the inmate's previous status, except that the institution shall compensate an inmate employed by prison industries in accordance with s. DOC 313.11. If 1983 Wis. Act 528 does not apply to the inmate, the inmate shall continue to earn extra good time credit. If the reporting staff member charges an inmate in a private sector/prison industry enhancement certification program with one or more offenses under this chapter, and the adjustment committee finds the inmate not guilty of all charges, the institution in which the inmate is confined shall pay the inmate at the prison's maximum pay rate for all hours absent from work due to the disciplinary process including temporary lock-up time. If the adjustment committee finds the inmate in a private sector/prison industry enhancement certification program guilty, the department shall not pay the inmate any pay for hours absent due to the disciplinary process.

(7) TLU time shall not be considered time served for disciplinary penalty purposes.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. (3), Register, April, 1985, No. 352, eff. 5-1-85; emerg. am. (6), eff. 11-18-85; am. (6), Register, May, 1986, No. 365, eff. 6-1-86; am. (6), Register, February, 1987, No. 374, eff. 3-1-87; am. (6), Register, June, 1989, No. 402, eff. 7-1-89.

Subchapter II - Offenses Against Bodily Security

DOC 303.12 Battery. (1) Any inmate who causes bodily injury or harm to another is guilty of an offense.

(2) Any inmate who spits or throws or uses body fluids or waste or any substance on another is guilty of an offense.

(3) Any inmate who causes the death of another is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.13 Sexual assault—intercourse Any inmate who has sexual intercourse, as defined in s. DOC 303.02 (21), with another person without that person's consent is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. Register, April, 1985, No. 352, eff. 5-1-85; correction made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1987, No. 378.

DOC 303.14 Sexual assault—contact. Any inmate who has sexual contact, as defined in s. DOC 303.02 (20), with another person without that person's consent is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. Register, April, 1985, No. 352, eff. 5-1-85; correction made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1987, No. 378.

DOC 303.15 Sexual conduct. (1) Any inmate who does any of the following is guilty of an offense:

(a) Has sexual intercourse, as defined in s. DOC 303.02 (21), with another person.

(b) Has sexual contact, as defined in s. DOC 303.02 (20), with another person.

(c) Requests, hires or tells another person to have sexual intercourse or sexual contact.

(d) Exposes the inmate's own intimate parts to another person for the purpose of sexual arousal or gratification.

(e) Has contact with or performs acts with an animal that would be sexual intercourse or sexual contact if with another person.

(f) Clutches, fondles, or touches the inmate's own intimate parts, whether clothed or unclothed, while observable by others.

(2) Lack of consent is not an element of the offense of sexual conduct.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; renum. (intro.) to (5) to be (1) and am., cr. (2), Register, April, 1985, No. 352, eff. 5-1-85; correction in (1) (a) and (b) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1987, No. 378.

DOC 303.16 Threats. Any inmate who does any of the following is guilty of an offense:

(1) Communicates to another a plan to physically harm, harass or intimidate that person or another.

(2) Communicates a plan to cause damage to or loss of that person's or another person's property.

(3) Communicates a plan to make an accusation he or she knows is false.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.17 Fighting. Any inmate who participates in a fight is guilty of an offense. "Fight" means any situation where 2 or more people are trying to injure each other by any physical means.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

Subchapter III - Offenses Against Institutional Security

DOC 303.18 Inciting a riot. Any inmate who encourages, directs, commands, coerces or signals one or more other persons to participate in a riot is guilty of an offense. "Riot" means a disturbance to institutional order caused by a group of 2 or more inmates which creates a risk of injury to persons or property.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.19 Participating in a riot. Any inmate who participates in a riot, as defined under s. DOC 303.18, or who remains in a group where some members of the group are participating in a riot, is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.20 Group resistance and petitions. (1) Any inmate who participates in any group activity which is not approved under s. DOC 309.22 or is contrary to provisions of this chapter is guilty of an offense.

(2) Any inmate who joins in or solicits another to join in any group petition or statement is guilty of an offense, except that the following activities are not prohibited:

(a) Group complaints in the inmate complaint review system.

(b) Group petitions to courts.

(c) Authorized activity by groups approved by the warden under s. DOC 309.22 or legitimate activities required to submit a request under s. DOC 309.22 (3) or (4).

(d) Group petitions to government bodies, legislators, courts or newspapers.

(3) Any inmate who participates in any activity with an inmate gang, as defined in s. DOC 303.02 (11), or possesses any gang literature, creed, symbols or symbolisms is guilty of an offense. An inmate's possession of gang literature, creed symbols or symbolism is an act which shows that the inmate violates the rule. Institution staff may determine on a case by case basis what constitutes an unsanctioned group activity.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; emerg. am. eff. 12-5-86; am. Register, June, 1987, No. 378, eff. 7-1-87.

DOC 303.21 Cruelty to animals. Any inmate who causes bodily injury to an animal or the unauthorized death of an animal is guilty of an offense.

DOC 303.22 Escape. (1) An inmate who does or attempts to do any of the following without permission is guilty of an offense:

- (a) Leaves an institution.
- (b) Leaves the custody of a staff member while outside of the institution.
- (c) Does not follow the inmate's assigned schedule.
- (d) Leaves the authorized area to which the inmate is assigned.

(2) Any inmate who makes or possesses any materials for use in escape is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.23 Disguising identity. Any inmate who conceals or disguises the inmate's usual appearance to interfere with or prevent identification is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80

Subchapter IV - Offenses Against Order

DOC 303.24 Disobeying orders. (1) Any inmate who disobeys a verbal or written directive or order from any staff member, directed to the inmate or to a group of which the inmate is or was a member is guilty of an offense.

(2) An inmate is guilty of an offense if the inmate commits an act which violates an order, whether the inmate knew or should have known that the order existed.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.25 Disrespect. Any inmate who shows disrespect to any person is guilty of an offense, whether or not the subject of the disrespect is present and even if the expression of disrespect is in writing. Disrespect includes, but is not limited to, derogatory or profane writing, remarks or gestures, name-calling, yelling, and other acts made outside the formal complaint process which are expressions of disrespect for authority.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. Register, April, 1985, No. 352, eff. 5-1-85.

DOC 303.26 Soliciting staff. An inmate who does any of the following is guilty of an offense:

- (1) Offers or gives anything to a staff member or acquaintance or family of a staff member. This subsection does not apply to anything authorized by these rules or institution policy and procedure.
- (2) Requests or accepts anything from a staff member or acquaintance or family of a staff member. This subsection does not apply to anything authorized by these rules or institution policy and procedure.

(3) Buys anything from, or sells anything to, a staff member or acquaintance or family of a staff member. This subsection does not apply to items for sale in accordance with institutional procedures.

(4) Requests a staff member or acquaintance or family of a staff member to purchase anything for the inmate. The warden may allow this by special authorization.

(5) Requests another person to give anything to a staff member, or agrees with another person to give anything to a staff member or acquaintance or family of a staff member.

(6) Conveys affection to, or about staff verbally or in writing whether personally written or commercially written or by drawings; or asks for addresses, phone numbers, favors or requests special attention of a staff member or acquaintance or family of a staff member.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; cr. (5), Register, April, 1985, No. 352, eff. 5-1-85.

DOC 303.27 Lying. Any inmate who makes a false written or oral statement is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.271 Lying about staff. Any inmate who makes a false written or oral statement about a staff member and makes that false statement outside the complaint review system is guilty of an offense.

History: Cr. Register, April, 1985, No. 352, eff. 5-1-85.

DOC 303.28 Disruptive conduct. Any inmate who engages in, causes or provokes disruptive conduct is guilty of an offense. "Disruptive conduct" includes physically resisting a staff member, or overt behavior which is loud, offensive or vulgar.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. Register, April, 1985, No. 352, eff. 5-1-85.

DOC 303.30 Unauthorized forms of communication. Any inmate who communicates with another person by a method not authorized by the institution is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.31 False names and titles. Any inmate who uses any of the following is guilty of an offense:

- (1) A title for the inmate other than Mr., Ms., Miss, or Mrs., as appropriate.
- (2) A name other than the name by which the inmate was committed to the department unless the name was legally changed.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.32 Enterprises and fraud. (1) Any inmate who engages in a business or enterprise, whether or not for profit, or who sells anything except as specifically allowed under other sections is guilty of an offense, except for the following situation:

- (a) An inmate who was owner or part owner of any business or enterprise prior to sentencing may communicate with the inmate's

manager or partner concerning the management of the enterprise or business.

(b) An inmate may write and seek publication of works in accordance with these rules and institutional policies and procedures.

(2) Any inmate who offers to buy or orders any item with the intention of not paying for it or buys it on credit is guilty of an offense.

(3) Any inmate who misrepresents facts to another to obtain items of value is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

Subchapter V-Offenses Against Property

DOC 303.34 Theft. Any inmate who steals the property of another person or of the state is guilty of an offense. "Steals" means obtains or retains possession of or title to the property of another, without consent of the owner.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.35 Damage or alteration of property. (1) Any inmate who damages, destroys or alters any property of the state or of another person without authorization is guilty of an offense.

(2) Any inmate who damages, destroys, alters, or disposes of the inmate's own property without the permission of the staff of the inmate's own living unit is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.36 Misuse of state or federal property. Any inmate who uses any government property in any way that is not authorized is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; r. and recr. Register, April, 1985, No. 352, eff. 5-1-85.

DOC 303.37 Arson. Any inmate who ignites a fire and thereby creates a risk to people or property, or both, is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.38 Causing an explosion or fire. Any inmate who causes an explosion or starts a fire is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.39 Creating a hazard. Any inmate who creates a hazard by fire, explosion or other means, is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.40 Unauthorized transfer of property. Any inmate who gives, receives, sells, buys, exchanges, barter, lends, borrows or takes any property from another inmate without authorization is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.41 Counterfeiting and forgery. Any inmate who makes, uses, possesses, or alters any document so it appears that the document was made or signed by a different person; or that the

document was signed at a different time or with different provisions is guilty of an offense.

Subchapter VI - Contraband Offenses

DOC 303.42 Possession of money. Except as specifically authorized, any inmate who has in the inmate's possession any of the following is guilty of an offense:

- (a) Coins or paper money.
- (b) A check.
- (c) A money order.
- (d) A savings bond.
- (e) Any other negotiable instrument.
- (f) A credit card.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.43 Possession of intoxicants. Except as specifically authorized, any inmate who has in the inmate's possession any intoxicating substance is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.44 Possession of drug paraphernalia. Any inmate who possesses any device used in the manufacture of an intoxicating substance or any device used to take an intoxicating substance into the body, is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.45 Possession, manufacture and alteration of weapons. (1) Any inmate who possesses any item to be used as a weapon, is guilty of an offense.

(2) Any inmate who makes or alters any item making it suitable for use as a weapon is guilty of an offense.

(3) Any inmate who possesses an item which is designed to be used as a weapon is guilty of an offense.

(4) Any inmate who possesses an item which could be used in the manufacture of a weapon is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.47 Possession of contraband— miscellaneous.

(1) Each institution shall maintain and make available to inmates a list of all types of property which inmates are allowed to possess in accordance with department policies and procedures relating to personal property.

(2) Any inmate who possess any of the following is guilty of an offense:

- (a) Items of a type which are not allowed.

- (b) Allowable items in excess of the quantity allowed.
- (c) Allowable items which are required to be listed but are not listed on the inmate's property list.
- (d) Items which do not belong to the inmate, except state property issued to the inmate for the inmate's use, such as sheets and uniforms.

(e) Personal written information relating to any staff of the department, including a staff's or staff's immediate family home address or telephone number.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; emerg. cr. (3), eff. 1-22-94, cr. (3), Register, May, 1994, No. 461, eff. 6-1-94.

DOC 303.48 Unauthorized use of the mail. (1) Any inmate who uses a postal service to communicate with a person who has been declared a prohibited correspondent of that inmate in accordance with ch. DOC 309 is guilty of an offense.

(2) Any inmate who sends through the mail anything which, according to this chapter, the inmate may not have in the inmate's possession, is guilty of an offense.

(3) Any inmate who does any of the following is guilty of an offense:

(a) Makes or alters any postage stamp or alters or erases a postal cancellation mark or possesses any postage stamp that has been altered.

(b) Mails or attempts to mail any letter or parcel on which is affixed a canceled postage stamp.

(c) Uses a forged, counterfeit, or altered document, postage stamp or postal cancellation mark.

(4) Any inmate who attempts to circumvent the rules under s. DOC 309.04 related to mail by sending a second envelope or letter within an envelope addressed to a destination other than the address on the outside envelope, is guilty of an offense.

(5) Any inmate who sends food samples through the mail is guilty of an offense.

(6) Any inmate who sends body fluids or body wastes, including pubic hair, through the mail is guilty of an offense.

(7) Any inmate who sends correspondence which harms, harasses or intimidates any person is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

Subchapter VII - Movement Offenses

DOC 303.49 Punctuality and attendance. Inmates shall attend and be on time for all activities for which they are scheduled. Any inmate who violates this section is guilty of an offense, unless one of the following exist:

(1) The inmate is sick and reports this fact as required by institution policies and procedures.

(2) The inmate has a valid pass to be in some other location.

(3) The inmate is authorized to skip the event.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.50 Loitering. Inmates shall walk at a normal pace, following a normal route, and without delay when going to and from all activities and their quarters. Any inmate who violates this section is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.51 Leaving assigned area. Any inmate who leaves a room or area where the inmate is required to be is guilty of an offense, unless one of the following exists:

(1) The inmate gets permission to leave from a staff member supervising the activity.

(2) The inmate has a valid pass to go somewhere else at that time.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.511 Being in an unassigned area. Any inmate who, without a staff member's permission, enters or remains in a room or area other than the one to which the inmate is assigned is guilty of an offense.

History: Cr. Register, April, 1985, No. 352, eff. 5-1-85.

DOC 303.52 Entry of another inmate's quarters. Any inmate who enters the quarters of any other inmate or permits another to enter their own quarters, is guilty of an offense, unless such entry is the result of one of the following:

(1) (a) Part of a work assignment and under the supervision of a staff member.

(b) Allowed according to institution policies and procedures.

(2) Reaching, leaning, or putting any object or part of the body into another inmate's quarters is included in "entering."

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

Subchapter VIII - Offenses Against Safety And Health

DOC 303.54 Improper storage. The inmate shall keep toiletries, hobby materials, medications, cleaning supplies and certain other items in the original containers, unless otherwise specified, and in the authorized place. Any inmate who stores any of these items in a different container or in an unauthorized place is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.55 Dirty quarters Any inmate who does not comply with institution procedures for orderly and clean quarters is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.56 Poor grooming. (1) Any inmate whose personal cleanliness or grooming is a health hazard to the inmate or others or is offensive to others is guilty of an offense.

(2) Any inmate who fails to shower at least once a week, unless the inmate has a medical excuse, is guilty of an offense.

(3) The institution may require inmates performing work assignments which may be hazardous to maintain suitably cut hair, or to wear protective equipment. Any inmate who fails to wear such required equipment or who fails to maintain suitably cut hair is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.57 Misuse of prescription medication. Any inmate who does any of the following is guilty of an offense:

(1) Takes more of a prescription medication than was prescribed.

(2) Takes a prescription medication more often than was prescribed.

(3) Takes a prescription medication which was not prescribed for the inmate.

(4) Possesses or takes any prescription medication except at the time and place where the inmate is supposed to take it.

(5) Improperly disposes of any prescription medication. The inmate shall return unused medication to staff.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.58 Disfigurement. Any inmate who disfigures, cuts, pierces, removes, mutilates, discolors or tattoos any part of the inmate's body or the body of another, is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

Subchapter IX - Miscellaneous Offenses

DOC 303.59 Use of intoxicants. (1) Any inmate who takes into the inmate's body any intoxicating substance, except prescription medication in accordance with the prescription, is guilty of an offense.

(2) (a) When a test on an inmate's body specimen or a physical examination of an inmate indicates use of an intoxicating substance, the inmate is guilty of an offense.

(b) The institution shall confirm results of a test conducted under par. (a) by a second test if the inmate requests a confirmatory test immediately after the institution informs the inmate of a positive test result.

(c) Any confirmatory test shall be conducted in accordance with department procedures.

(d) An inmate who requests a confirmatory test shall pay for the cost of the test. If the inmate does not have sufficient funds to pay for the cost of the test, the institution in which the inmate is confined shall loan the inmate the necessary funds. If the confirmatory test does not validate the results of the first test,

the institution shall refund any money the inmate contributed to the cost of the confirmatory test.

(3) An inmate who refuses to provide a body specimen, submit to a physical examination, or a breathalyzer test, is guilty of the offense of use of intoxicants.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. Register, January, 1987, No. 373, eff. 2-1-87; emerg. r. and recr. (2), eff. 3-6-87; r. and recr. (2), Register, July, 1987, No. 379, eff. 8-1-87.

DOC 303.60 Gambling. Any inmate who is involved in gambling, gambles or possesses any gambling material is guilty of an offense. "Gambles" includes betting money or anything of value on the outcome of all or any part of any game of skill or chance or an athletic contest or on the outcome of any event, or participation in any lottery or sweepstakes.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.61 Refusal to work or attend school. Any inmate who refuses to perform a work assignment or attend school, is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.62 Inadequate work or study performance. Any inmate whose work fails to meet the standards set for performance on a job or school program is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.63 Violations of institution policies and procedures. Each institution may make specific substantive disciplinary policies and procedures. Any inmate who violates any of these specific disciplinary policies and procedures is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. (1) (d) and r. (3), Register, April, 1985, No. 352, eff. 5-1-85; am. (1) (a), Register, April, 1994, No. 460, eff. 5-1-94.

DOC 303.631 Violating conditions of leave. Any inmate who violates conditions of leave imposed under s. DOC 326.10 is guilty of an offense.

History: Cr. Register, April, 1985, No. 352, eff. 5-1-85.

Subchapter X - Disciplinary Procedure And Penalties

DOC 303.64 Disciplinary violations—possible dispositions. The institution may deal with a violation of ss. DOC 303.12 to 303.63 in the following ways:

(1) If a staff member determines that a conduct report is not required, the staff member may counsel and warn the inmate under s. DOC 303.65.

(2) The staff member may dispose of a minor violation summarily under s. DOC 303.74.

(3) Staff may refer any violation to the security director in writing by a conduct report as provided under s. DOC 303.66. The security director may deal with these violations as follows:

(a) The security director may dismiss, alter or correct the report as provided under s. DOC 303.67.

(b) If the violation is a minor one, the security director shall refer the matter to a hearing officer to be disposed of in accordance with s. DOC 303.75.

(c) If the violation is a major one, the security director shall refer the matter to a hearing officer to be disposed of in accordance with ss. DOC 303.76 to 303.84.

(4) The security director may refer violations of the criminal law to law enforcement authorities for further investigation and prosecution. Whether or not prosecution is started, the institution may handle the incident as a disciplinary offense.

(5) If the adjustment committee finds an inmate guilty, the adjustment committee may refer the inmate to program review to review the inmate's program assignment and custody level.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.65 Offenses that do not require a conduct report. (1) The department does not require staff members to make official conduct reports on all observed violations of the disciplinary rules. Under any of the following conditions, staff may merely inform the inmate that the inmate's behavior is against the rules and discuss the inmate's behavior and give a warning if:

(a) The inmate is unfamiliar with the rule.

(b) The inmate has not violated the same or a closely related rule within the previous year (whether or not a conduct report was made).

(c) The inmate is unlikely to repeat the offense if warned and counseled.

(d) Although the inmate's acts were a technical violation of a rule, the purposes of this chapter would not be served by writing a conduct report in the particular situation.

(2) The staff member shall write a conduct report if an inmate commits a major offense.

(3) The department does not require staff to make official reports of dispositions made in accordance with sub. (1).

(4) The security director may strike a charge if the security director believes the charge is inappropriate, in accordance with s. DOC 303.67. The hearing officer, adjustment committee or warden may not review the security director's decision to strike a charge.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.66 Conduct report. (1) Except under the conditions described in s. DOC 303.65, any staff member who observes or finds out about a rule violation shall do any investigation necessary to assure that a violation occurred, and if the staff member believes a violation has occurred, shall write

a conduct report. If more than one staff member knows of the same incident, only one of them shall write a conduct report.

(2) In the conduct report, the staff member shall describe the facts in detail and what other staff members reported, and list the sections of ch. DOC 303 which were allegedly violated, even if they overlap.

(3) The institution shall issue only one conduct report for each act or transaction that is alleged to violate these sections. If one act or transaction is a violation of more than one section, the institution shall only issue one conduct report.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.67 Review by security office. (1) Within 2 working days of the date of issuance, the security director shall review all conduct reports.

(2) The security director shall review and approve conduct reports which resulted in summary disposition prior to entry in any of the inmate's records.

(3) The security director shall review conduct reports for the appropriateness of the charge.

(a) The security director may dismiss a conduct report.

(b) The security director shall strike any section number if the statement of facts could not support a finding of guilty of violating that section.

(c) The security director may add any section number if the statement of facts could support a finding of guilty of violating that section and the addition is appropriate.

(d) The security director may refer a conduct report for further investigation.

(4) The security director shall divide all remaining conduct reports into major offenses, which include those with both major and minor offenses, in accordance with ss. DOC 303.76 to 303.84, and shall dispose of minor offenses in accordance with s. DOC 303.75.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

DOC 303.68 Major and minor penalties and offenses.

(1) (a) A "major penalty" is adjustment segregation as defined in ss. DOC 303.69 and 303.84, program segregation as defined in ss. DOC 303.70 and 303.84, loss of earned good time or extension of mandatory release date under s. DOC 303.84, disciplinary separation under s. 303.70, room confinement of 16 to 30 days, loss of recreation privileges for over 60 days for inmates in the general population, loss of recreation privileges for over 8 days for inmates in segregation, building confinement for over 30 days, and loss of specific privileges for over 60 days. The adjustment committee may impose a minor penalty for a violation where a major penalty could be imposed. The adjustment committee may impose restitution in addition to or in lieu of any major penalty and may impose any combination of penalties.